

Falling Through the Cracks in YouTube's Copyright System

Written by Patrick McKay

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Over the last few months, I have become increasingly aware of a fatal flaw in YouTube's copyright enforcement regime, which frequently leaves non-infringing videos blocked for supposed copyright reasons with literally no recourse for the user and no way to dispute the copyright block.

YouTube's copyright policies are confusing enough to begin with, as unlike most other video sharing sites, YouTube has not one but TWO overlapping copyright enforcement systems—it's automated Content ID system, and the regular DMCA takedown regime that all content hosting sites are required to follow by the Digital Millennium Copyright Act.

Videos can be blocked/taken down by either system, and each system has its own process for filing a dispute. If a video is subject to a DMCA takedown notice (which must meet standards established by law), it shows up in your account as "rejected for copyright infringement," and there will also be a strike placed against your account, which will cause your account to be terminated upon the third strike. If your video makes fair use of the copyrighted content in question or the claim is false, you can file a DMCA counter-notification (also specified by law), and your video will be restored after a waiting period of approximately three weeks.

If a video is identified by YouTube's automated, media fingerprinting "Content ID" system as containing content by a copyright owner enrolled in the Content ID program, several things can happen. The video can remain viewable, but "monetized," meaning ads will show next to it; it can be blocked entirely (either worldwide or in selected countries), or in the case of audio-only matches, the sound can be muted. These videos show up on your "My Videos" page as having "matched third party content." Because this is all done by computer and no form of DMCA takedown notice has been sent, videos blocked in this manner do not cause a strike to accrue against your account. If you want to dispute a Content ID block, there is an easy dispute form which you can fill out, which in most cases will cause the video to be automatically and immediately restored, though it does send a notice of your dispute to the copyright owner.

Here's where things get tricky, since the copyright owner then has the opportunity to respond to your dispute. Often they will simply ignore it, and after a few months the "View Copyright Info" page for that video will display a message saying "dispute successful" and the content match will soon disappear entirely. On the other hand, what happens if the copyright owner still believes the material is infringing? [According to YouTube](#), this is what is supposed to happen:

If you feel your video has been misidentified by the Content ID system, you can dispute the

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identification. This involves [filling out a short form](#) listing the reason for your dispute. We then notify the content owner whose reference material was matched. The content owner will then review the match. If the content owner disagrees with your dispute for any reason, they will have the option to submit a copyright takedown notice which will result in the disabling of your video and/or penalties against your account. To avoid penalization, only submit legitimate dispute claims.

In other words, if the copyright claimant does not accept your dispute, they have the option of escalating to a formal DMCA takedown notice, in which case YouTube's other copyright enforcement system kicks in, the video would be taken down again, and a strike would be issued against your account. The user would then have the right to dispute a second time using a DMCA counter-notice, and have the video restored once again. According to the DMCA, this is where the process ends, since only if the copyright claimant notifies the service provider that they intent to file a lawsuit seeking an injunction against your video can the service provider leave it offline. Otherwise they are supposed to restore it after the waiting period established by law.

This is how the copyright dispute process on YouTube is supposed to work: **Content ID match (video blocked) -> Content ID dispute (video restored) -> DMCA notice (video re-blocked) -> DMCA counter-notice ->(video restored unless notice of lawsuit given).**

This is not how it works practice however.

Sometime in the last couple years, YouTube has quietly started acting in a different way, contrary to their stated policy. Instead of requiring copyright owners to file a formal DMCA notice in response to a Content ID dispute, thus allowing users to invoke the DMCA counter-notice process, YouTube allows copyright owners to somehow "confirm" their copyright claim through the **Convent ID system** and re-impose whatever blocks were originally in place through Content ID. In this case, a message will appear on the user's "View Copyright Info" page for that video saying, "**All content owners have reviewed your video and confirmed their claims to some or all of its content**". After this, as far as I can tell, there is absolutely no way for the user to file a dispute and get their video restored.

I had been hearing reports about this happening for months. Because of my website, fairusetube.org

and the video tutorials I have posted on YouTube regarding fair use and the Content ID dispute process, people have been posting comments and sending me messages about this for a while. But until last week, it had not actually happened to me (at least where the video was

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blocked in the U.S. where fair use applies). Then last week, I noticed one of my [older anime music videos](#) was blocked pretty much everywhere, including the U.S., by Content ID. I filed a dispute as I have many other times, and the video was unblocked for a few days, and then re-blocked with the message above. No further Content ID dispute was possible, because the record of my original dispute was still there. And when I tried filing a DMCA counter-notice (I tried twice, using both YouTube's counter-notice webform and a counter-notice emailed to copyright@youtube.com), all I got was an automated response essentially telling me this is a Content ID issue not a DMCA issue. Other emails I have sent about this to YouTube's copyright support address have gone unanswered.

So I'm stuck. My Content ID dispute was rejected, but in a manner other than a DMCA takedown notice, so I am not allowed to take advantage of the DMCA counter-notice process. It appears there truly is no recourse for this situation. My video is blocked, and there is simply no process to file a further dispute and get my video restored again. Contrary to both the takedown process established by law and YouTube's own stated policy, the condition at the end of the process is that the user's video remains blocked, rather than remaining up unless notice is given of pending legal action over the video.

This situation is frankly outrageous. It was bad enough when YouTube created the Content ID system in the first place, imposing automated blocks on videos with no regard for fair use. It is even worse now that this system apparently has no effective means of dispute, since whenever a copyright owner chooses to "confirm" their claim (as anecdotal evidence suggests they are doing with increasing frequency), there is nothing users can do to fight it. They are literally stuck in a gap between YouTube's two competing copyright systems—a black hole which YouTube does not acknowledge even exists, and which, to my knowledge, no one else has ever addressed either. Something must be done about this, since until YouTube's policy in this situation changes, many videos that are perfectly legal and non-infringing will continue to be unjustly blocked by Content ID with no recourse.